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United States

**Circuit Court of Appeals**

For the Ninth Circuit.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Transcript of Record.**

Upon Writ of Error to the United States District  
Court of the Territory of Alaska,

Division No. 1.

FILED  
MAY 8 - 1924  
F. O. MONTGOMERY



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ARTHUR G. SHOUP, Esq., United States Attorney, Juneau, Alaska,

Attorney for Defendant in Error.

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In the District Court for the District of Alaska,  
Division Number One.

THE UNITED STATES OF AMERICA

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation.

INDICTMENT.

Section 1, Ch. 95, Session Laws of Alaska, 1923—  
870-KB.

At the special September term of the District Court, within and for the District of Alaska, Division Number One, in the year of our Lord one thousand nine hundred and twenty-three, begun and held at Ketchikan, in said district, beginning September 24, 1923.

## COUNT ONE.

The Grand Jurors of the United States of America, selected, impanelled, sworn, and charged within and for the District of Alaska, accuse AUK BAY SALMON CANNING COMPANY, a Corporation, at all times mentioned herein duly organized and existing as such, by this indictment of the crime of unlawful fishing, committed as follows:

The said AUK BAY SALMON CANNING COMPANY, a corporation, between the 10th day of August, 1923, and the first day of September, 1923, to wit, on August 10, 1923, in the waters of Lynn Canal, W. side of Mansfield Peninsula, same being waters of Alaska over which the United States has jurisdiction, and in Division No. One, District of Alaska, and within the jurisdiction of this Court, did wilfully and unlawfully fish for salmon for commercial purposes by means of a fish trap, Territorial License No. 23-394, then and there located as aforesaid, and east of 139th meridian west longitude and between the 57th degree north latitude and 60th degree north latitude.

And so the Grand Jurors duly selected, impaneled, sworn, and charged as aforesaid, upon their oaths do say: That AUK BAY SALMON CANNING COMPANY, a corporation, did then and there commit the crime of unlawful fishing in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided,



and against the peace and dignity of the United States of America. [1\*]

COUNT TWO.

The Grand Jurors of the United States of America, selected, impanelled, sworn, and charged within and for the District of Alaska, accuse AUK BAY SALMON CANNING COMPANY, a corporation, at all times mentioned herein duly organized and existing as such, by this indictment of the crime of unlawful fishing, committed as follows:

The said AUK BAY SALMON CANNING COMPANY, a corporation, between the 10th day of August, 1923, and the first day of September, 1923, to wit, on August 11, 1923, in the waters of Chatham Straits, N. W. from Parker Pt., W. side Admiralty Island, the same being waters of Alaska over which the United States has jurisdiction, and in Division No. One, District of Alaska, and within the jurisdiction of this Court, did wilfully and unlawfully fish for salmon for commercial purposes by means of a fish trap, Territorial License No. 23-284, then and there located as aforesaid, and east of 139th meridian west longitude and between the 57th degree north latitude and 60th degree north latitude.

And so the Grand Jurors, duly selected, impanelled, sworn, and charged as aforesaid, upon their oaths do say: That AUK BAY SALMON CANNING COMPANY, a corporation, did then and there commit the crime of unlawful fishing in the manner and form aforesaid, contrary to the form

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\*Page-number appearing at foot of page of original Certified Transcript of Record.

of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

### COUNT THREE.

The Grand Jurors of the United States of America, selected, impanelled, sworn, and charged within and for the District of Alaska, accuse AUK BAY SALMON CANNING COMPANY, a corporation, at all times mentioned herein duly organized and existing as such, by this indictment of the crime of unlawful fishing, committed as follows:

The said AUK BAY SALMON CANNING COMPANY, a corporation, between the 10th day of August, 1923, and the first day of September, 1923, to wit, on August 15, 1923, in the waters of Lynn Canal, at Point Retreat, W. side of Mansfield Peninsula, the same being waters of Alaska over which [2] the United States has jurisdiction, and in Division No. One, District of Alaska, and within the jurisdiction of this Court, did wilfully and unlawfully fish for salmon for commercial purposes by means of a fish trap, Territorial License No. 23-393, then and there located as aforesaid, and east of the 139th meridian west longitude and between the 57th degree north latitude and 60th degree north latitude.

And so the Grand Jurors duly selected, impanelled, sworn, and charged as aforesaid, upon their oaths do say: That AUK BAY SALMON CANNING COMPANY, a corporation, did then and there commit the crime of unlawful fishing in the manner and form aforesaid, contrary to the form of the statutes in such cases made and provided, and

against the peace and dignity of the United States of America.

A. G. SHOUP,  
United States Attorney.

WITNESSES:

M. J. O'Connor.

Presented by F. J. Hunt, Foreman of the Grand Jury, in the presence of the Grand Jury, in open court and filed in open court with the Clerk of the District Court, all on this 5th day of Oct., 1923.

JOHN H. DUNN,  
Clerk.

[Endorsed]: No. 1610-B. District Court, District of Alaska, First Division. The United States vs. Auk Bay Salmon Canning Company, a Corporation. Indictment—Vio. Sec. 1, Ch. 95, Session Laws of Alaska, 1923. Unlawful Fishing. A True Bill. Forest J. Hunt, Foreman. A. G. Shoup, U. S. Attorney. [3]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 1610-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,

Defendant.

## MOTION TO QUASH INDICTMENT.

Comes now the defendant and moves this Honorable Court to quash the indictment herein on the following grounds, to wit:

1. That Chap. 95, A. S. L. 1923, is contrary to the Act of Congress of August 24, 1912, and particularly to Section 3 thereof in that it amends, modifies, alters and repeals the game and fish laws of the United States applicable to Alaska.

2. That Chap. 95, A. S. L. 1923, is contrary to the Act of Congress of August 24, 1912, and particularly to Section 9 thereof in that, without the affirmative approval of Congress, it grants to certain corporations, associations and individuals certain special and exclusive immunities, privileges and franchises.

3. That Chap. 95, A. S. L. 1923, is contrary to the Act of Congress of August 24, 1912, and particularly to section 9 thereof, in that it is contrary to the Act of Congress of July 30, 1886, and particularly in that it (a) is a local and special law for and in relation to the protection of game and fish and (b) grants certain corporations, associations and individuals certain special and exclusive privileges, immunities and franchises. [4]

4. That Chap. 95, A. S. L. 1923, is contrary to the Act of Congress of August 24, 1912, and particularly to Section 9 thereof in that it is contrary to the Constitution of the United States and violates:

(a) The "equal protection of the laws" clause of the 14th Amendment of said Constitution.

(b) The 14th Amendment of said Constitution, and abridges the privileges and immunities of citizens of the United States.

(c) The "due process of law" clause of the 5th and 14th amendments of said Constitution.

5. That the taking or fishing for salmon in the manner and at the time and place and for the purpose as set forth in the indictment is not a crime against the peace or dignity of the United States, and that the legislature of Alaska is without, and never has had, authority or power to make such taking or fishing for salmon a crime against the peace or dignity of the United States.

And in support of this motion defendant alleges that it is a citizen of the United States of America.

Respectfully submitted:

H. L. FAULKNER,  
R. E. ROBERTSON,  
Attorneys for Defendant.

Copy received Nov. 19, 1923.

L. O. GORE,  
Asst. U. S. Atty.

Filed in the District Court, Territory of Alaska, First Division. Nov. 20, 1923. John H. Dunn, Clerk. By \_\_\_\_\_, Deputy. [5]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 1610-B.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,

Defendant.

DEMURRER.

Comes now the defendant by its attorneys, H. L. Faulkner and R. E. Robertson, and demurs to the indictment filed herein on the following grounds:

I.

That the facts stated in said indictment do not constitute a crime.

II.

That the indictment does not conform to the requirements of Chapter 7 of Title 15 of the Code of Criminal Procedure, Compiled Laws of Alaska.

R. E. ROBERTSON.

H. L. FAULKNER.

Copy received Nov. 21, 1923.

A. G. SHOUP,

U. S. Atty.

By H. D. STABLER,

Sp. Asst. U. S. Atty.



Filed in the District Court, Territory of Alaska,  
First Division. Nov. 21, 1923. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy. [6]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 1610-B—(870-KB).

UNITED STATES OF AMERICA

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation.

**ORDER DENYING MOTION TO QUASH.**

This matter coming on to be heard upon the motion of the defendant to quash the indictment filed herein and upon defendant's demurrer to the indictment, and argument having been heard,—

IT IS HEREBY ORDERED that the motion to quash the indictment be denied; exception allowed to defendant.

AND IT IS FURTHER ORDERED that the demurrer of defendant be sustained as to Count One of the indictment and be overruled as to Counts Two and Three of the indictment. Exception allowed to defendant.

Dated at Juneau, Alaska, December 29, 1923.

THOS. M. REED,

Judge.

Entered Court Journal No. 1, page 492.

Filed in the District Court, Territory of Alaska,  
First Division. Jan. 9, 1924. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy. [7]

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United States of America, District of Alaska.

In the District Court of the United States for the  
District of Alaska, Division Number One.

No. 870-KB.

THE UNITED STATES OF AMERICA

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation.

VERDICT.

Special April, 1924, Term.

We, the jury impaneled and sworn in the above-  
entitled cause find the defendant . . . guilty as  
charged in Count 2 of the indictment.

We, the jury impaneled and sworn in the above-  
entitled cause, find the defendant . . . guilty  
as charged in Count 3 of the indictment.

Dated at Ketchikan, Alaska, April 21, 1924.

P. J. GILMORE,

Foreman.

Entered Court Journal, No. 1, pages 273-4.

Filed in the District Court, Territory of Alaska,  
First Division. April 21, 1924. John H. Dunn,  
Clerk. By \_\_\_\_\_, Deputy. [8]



In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

UNITED STATES OF AMERICA

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation.

JUDGMENT AND SENTENCE.

This matter coming on to be heard for the imposition of sentence upon the above-named defendant upon the verdict of the jury impaneled, sworn and charged in said cause by which verdict said defendant was found guilty of the crime of unlawful fishing in violation of Section 1, Chapter 95, 1923 Session Laws of Alaska, as charged in Count 2 of the indictment on file herein and found guilty of the crime of unlawful fishing in violation of Section 1, Chapter 95, 1923 Session Laws of Alaska, as charged in Count 3 of the indictment on file herein; the defendant is present in court and represented by H. L. Faulkner, its attorney, A. G. Shoup appearing for the United States; the defendant is asked if there is any reason why sentence should not now be imposed, to which no good or sufficient reason is offered, and the Court being fully advised in the premises

DOES HEREBY CONSIDER, ADJUDGE  
AND DECREE that it is the judgment of the  
Court that the said defendant Auk Bay Salmon

Canning Company, a corporation, is guilty of the crime of unlawful fishing as charged in Count 2 of said indictment and guilty of the crime of unlawful fishing as charged in Count 3 of said indictment; and it is the sentence of the Court that said defendant be fined the sum of Two Hundred Dollars on Count 2 of said indictment and be fined the sum of Two Hundred Dollars on Count 3 of [9] said indictment and that it pay the costs of this action.

Time for sentence having heretofore been waived.  
Exception allowed.

Done in open court this 21st day of April, 1924.

THOS. M. REED,  
Judge.

Filed in the District Court, Territory of Alaska, First Division. Apr. 21, 1924. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. 1, page 277. [10]

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In the District Court for the Territory of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

THE AUK BAY SALMON CANNING CO.,  
Defendant.

BILL OF EXCEPTIONS.

BE IT REMEMBERED That the above-entitled cause came on duly and regularly to be tried at Ketchikan, Alaska, on Monday, the 21st day of April, 1924, before the Honorable Thomas M. Reed, Judge of said court, and a jury.

The plaintiff was represented by United States Attorney A. G. Shoup and the defendant was represented by Mr. H. L. Faulkner.

A jury having been impaneled, opening statement was made to the Court and jury by Mr. Shoup on behalf of the plaintiff, the defendant, by its counsel, waiving the making of a statement.

Whereupon the following proceedings were had and done, to wit: [11]

Mr. FAULKNER.—Now, if the Court please, before any testimony is introduced or any questions are asked of the witness, I would like at this time to object to the introduction of any testimony in this case upon the ground that the Legislature of the Territory had no authority to pass Chapter 95 of the Session Laws of Alaska, 1923, under which this indictment is brought, and to urge the same grounds as urged in the motion to quash and the demurrer.

The COURT.—Objection overruled; exception allowed.

TESTIMONY OF M. J. O'CONNOR, FOR  
PLAINTIFF.

M. J. O'CONNOR, called as a witness on behalf of the plaintiff, having been first duly sworn to tell the truth, testified as follows:

Direct Examination by Mr. SHOUP.

Q. Please state your name and official position.

A. M. J. O'Connor; warden Bureau of Fisheries.

Q. What is your territory or your station?

A. My territory is from Cape Fanshaw to Cape Spencer, in the northern part of this district.

Q. In Alaska?      A. In Alaska.

Q. Are you acquainted with the Auk Bay Salmon Company, a corporation?      A. Yes, sir.

Q. What business are they engaged in?

A. Canning salmon.

Q. Where?      A. At Auk Bay.

Q. Where is Auk Bay?

A. Auk Bay is about twelve or thirteen miles north of Juneau.

Q. First Division, Territory of Alaska?

A. First Division, Territory of Alaska. [12]

Q. Now, I will ask you whether or not Auk Bay is between 57 and 60 deg. of north latitude and east of the 139 meridian of north longitude?      A. It is.

Q. Are you acquainted with the Auk Bay Salmon Company's trap on Chatham Straits, northwest from Parker Point, on the west side of Admiralty Island, said fish-trap bearing territorial license No. 23-284?      A. Yes, sir.

(Testimony of M. J. O'Connor.)

Q. I will ask you whether you visited that trap on the eleventh day of August, 1923?

A. Yes, sir.

Q. Did you make any notation as to whether or not that trap at that time was fishing?

A. Yes, sir.

Q. Who owns that trap, do you know?

A. The Auk Bay Canning Co.

Q. Who operates it?

A. The Auk Bay Canning Company.

Q. What did you find with reference to that trap on the 11th day of August, 1923?

A. I found the trap was set for fishing. There was about 300 salmon in the pot and about 10,000 in the spiller. There were about that, more or less, I estimated.

Q. The trap was fishing at that time? A. Yes.

Q. Was anybody there? A. A watchman.

Q. By whom was that watchman employed?

A. The Auk Bay Canning Company. [13]

The COURT.—The Auk Bay Canning Co. or Salmon Company?

The WITNESS.—Salmon Company.

Q. Is that trap east of the 139th meridian of west longitude, between 57 north latitude and 60 north latitude? A. Yes, sir.

Q. Do you know the Auk Bay Salmon Company's trap on Lynn Canal, near Point Retreat, on the west side of Mansfield Peninsula bearing territorial license No. 23-393? A. Yes, sir.

Q. I will ask you if you visited that trap.

(Testimony of M. J. O'Connor.)

A. On August 15th.

Q. On the 15th of August, 1923?      A. Yes, sir.

The COURT.—Who is the owner of that trap?

The WITNESS.—The Auk Bay Salmon Company.

The COURT.—The Auk Bay Salmon Company?

The WITNESS.—The same company that owns the other trap.

The COURT.—What is the name of the company that owned the other trap?

The WITNESS.—The Auk Bay Salmon—let's see—the Auk Bay Salmon Canning Co.

Q. And the Auk Bay Salmon Canning Company is the company you had reference to?

A. In my previous testimony; yes.

Q. And has the cannery also?

A. The same cannery.

Q. When you visited the trap on Point Retreat the 15th of August, the trap you have just mentioned, what did you find there?

A. The scow had just been in and lifted the trap—brailed it. [14]

Q. Whose scow?

A. The Auk Bay Salmon Canning Company's scow.

Q. Was the trap still fishing when you left there after it was lifted?

A. The trap was set for fishing, but there was no fish except a few in the spiller. There was none seen in the pot.

Q. It was set?      A. It was set for fish; yes.



(Testimony of M. J. O'Connor.)

Q. Was anybody in charge of it?

A. The watchman was on shore. He didn't come out.

Q. There was a watchman there? A. Yes.

Q. But he didn't come out? A. No.

Q. By whom was he employed?

A. He was employed by the Auk Bay Salmon Canning Co.

Q. Captain, I'll ask you if you know whether that company is incorporated. Just answer yes or no.

A. I am not sure. I couldn't say.

Q. That trap in Lynn Canal is in the Territory of Alaska, east of the 139th meridian of west longitude and between the 57th degree of north latitude and 60th degree north latitude? A. Yes, sir.

Q. One other question about this trap that you testify to as having fished on the eleventh of August and 15th of August, were those fish being caught for commercial purposes? A. Yes, sir.

Q. How do you know?

A. Well, they were taken to the cannery and canned and shipped below. [15]

Q. And they were not catching them with seines?

A. No.

Q. Or by trolling? A. No; no, sir.

Q. And you know of your own knowledge that they were fishing for commercial purposes?

A. Yes, sir.

Mr. SHOUP.—That's all.

Mr. FAULKNER.—That's all.

TESTIMONY OF H. L. FAULKNER, FOR  
PLAINTIFF.

H. L. FAULKNER, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. SHOUP.

Q. Please state your name and profession.

A. H. L. Faulkner, attorney-at-law.

Q. You are acquainted with the Auk Bay Salmon Canning Company?     A. I am.

Q. Are you one of the attorneys for that corporation?     A. I'm their attorney; yes.

Q. Will you state to the Court and jury how that corporation is organized, under the laws of what State?

A. The corporation is organized under the laws of the State of Washington.

Q. And are they duly domesticated and authorized to do business in the Territory of Alaska?

A. Yes, sir.

Q. And their cannery is where?

A. The cannery is at Auk Bay, about 12 or 14 miles north of Juneau. [16]

Q. Are they engaged in commercial salmon fishing?     A. Yes, sir.

Mr. SHOUP.—That's all.



TESTIMONY OF H. R. THOMPSON, FOR  
PLAINTIFF.

H. R. THOMPSON, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. SHOUP.

Q. Please state your name and residence.

A. H. R. Thompson, Ketchikan, Alaska.

Q. What experience, if any, have you had in relation to commercial fishing by trollers?

A. I have had a great deal. I have bought fish from trollers for the last ten, fifteen years.

Q. Have you ever been out on the trolling grounds and are you familiar with how the business is carried on?     A. Yes, sir.

Q. Now, state from your knowledge what seasons of the year commercial fishing by trollers is carried on in that part of Alaska between the 57th degree of north latitude and 60th degree of north latitude and east of the 139 meridian of west longitude, in the Territory of Alaska.

A. I'm not exactly familiar with those latitudes and longitudes, but I suppose it takes in southeastern Alaska.

Q. That takes in all of southeastern Alaska. The line goes through at about Sitka, three miles south of Sitka, or so.

A. Commercial trolling is carried on now during the whole year. It's only within the last few years that they have made an all-year-around business of trol-

(Testimony of H. R. Thompson.)

ling. It used to be considered a seasonable business. They would generally start [17] in the spring and troll right through summer until about October, but the last few years they have made a commercial thing of it. They troll now during the summer and winter, spring and fall.

Q. What species of salmon is caught by trollers for commercial purposes?

A. King salmon and cohoes.

Q. Are those the only species they catch?

A. Practically; yes.

Q. Now, are those salmon, king salmon and cohoes, when caught by trollers, canned or shipped fresh?

A. All the king salmon are either shipped fresh or mild-cured. I think there's a few canneries that can a few kings.

Q. Such salmon, when they are caught by trollers, are they on the feeding-grounds or are they on their way to the spawning beds?

A. They are caught on the feeding grounds.

Q. What species of salmon are packed generally by the canneries in this part of the Territory?

A. The canneries generally can the cheaper and smaller salmon—the sockeye and the humpback and dog salmon.

Q. Are those salmon fished for commercially by trollers? A. No.

Q. Now, I will ask you whether or not those salmon that you mentioned, the kind that are canned, are they on the feeding grounds or are they

on the way to the spawning ground when caught by the canneries?

A. They're on the way to the spawning grounds.

Mr. SHOUP.—That's all. [18]

Whereupon the plaintiff rested.

Mr. FAULKNER.—At this time the defendant moves the Court to dismiss the indictment on the ground that the law under which the indictment has been brought is void; that the Territorial Legislature had no authority to pass chapter 95 of the Session Laws of 1923; that the purported law under which the indictment was brought is contrary to the provisions of the organic act of the Territory in that it alters, amends and modifies the fish laws of the United States.

The COURT.—The motion is denied.

Mr. FAULKNER.—We have no testimony and we now move the court to instruct the jury to find the defendant not guilty upon the same ground as stated in the motion to dismiss the indictment.

The COURT.—Motion is denied.

Mr. FAULKNER.—If the Court please, I ask an exception to the court's rulings on both of the motions.

The COURT.—You may take an exception.

The defendant here rested.

Whereupon the Court instructed the jury as follows:

## INSTRUCTIONS OF COURT TO THE JURY.

Ladies and Gentlemen of the Jury:

This case is brought under an indictment found by the grand jury here last fall, in which they indicted the Auk Bay Salmon Canning Company for fishing in violation of an act of the Legislature passed and approved May 4, 1923. This act provides that it shall be unlawful to take or fish for salmon for commercial purposes, except by trollers, in the waters of Alaska between the 57th and 60th degrees of north latitude and east of the 139 meridian of west longitude, from the 10th day of August to the first day of September in each year. This act therefore provides for a close season for fishing for salmon [19] for commercial purposes, except by means of trolling, in the waters of Alaska, between the 57th degree of north latitude and the 60th degree of north latitude and east of the 139 meridian of west longitude.

Now the indictment charges under this act, that the defendant, the Auk Bay Salmon Canning Company, on the 11th day of August, 1923, in the waters of Chatham Straits, northwest from Parker Point, on the west side of Admiralty Island, did wilfully and unlawfully fish for salmon, for commercial purposes by means of a fish-trap bearing territorial license No. 23-284, then and there located as aforesaid; that is, on Chatham Straits, northwest from Parker Point and east of the 139 meridian of west longitude and between the 57 degree of north latitude and the 60th degree of north latitude.

Now, this case is a criminal action, and you must

be satisfied from the evidence, beyond a reasonable doubt, that the defendant did so fish for commercial purposes by means other than by trolling, before you can find the defendant guilty.

The second count of the indictment charges the defendant with fishing between the tenth day of August and the 20th day of September—that is on August 15th—in the waters of Lynn Canal, at Point Retreat, on the north side of Mansfield Peninsula, for commercial purposes, by means of a fish-trap, territorial license No. 23-393, located on the waters of Lynn Canal, at Point Retreat, between the 57th degree of north latitude and the 60th degree of north latitude and east of the 139 meridian.

If you find from the evidence, beyond a reasonable doubt, that the defendant did so fish on the 15th day of August, for commercial purposes, by means of a fish-trap, in the waters of Alaska between the latitudes named, then it would be your duty [20] to find the defendant guilty on the third count.

The first count of the indictment has been ruled out, a demurrer to that count having been sustained because the count does not charge the defendant with fishing between the tenth day of August and the first day of September, 1923; so you will direct your attention to the second and third counts of the indictment only.

If you find that the defendant fished by means of a fish-trap at the points charged in the indictment and as charged in the indictment, between the 57th



degree and the 60th degree of north latitude and east of the 139th meridian of west longitude, it will be your duty to find the defendant guilty as charged in the indictment.

You will be handed one form of verdict. You will find that this verdict directs the jury to pass upon each count separately. When you have agreed on a verdict, you will have it signed by your foreman and returned into open court in the presence of you all.

Mr. FAULKNER.—If the Court please, I want to take an exception for the purpose of the record. The defendant at this time excepts to the instruction of the court to the jury to the effect that if they find from the evidence that the defendant was fishing by means of a fish-trap, for commercial purposes, between the 57th degree of north latitude and the 60th degree of north latitude and east of the 139 meridian of west longitude, between August 10th and September 1, 1923, as charged in the second and third counts of the indictment, they must find the defendant guilty, the objection being based upon the same grounds heretofore advanced—that the Territorial Legislature had no power to pass the alleged law under which the indictment was found.

Whereupon the jury retired to deliberate on a verdict. [21]

In the District Court for the Territory of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

THE AUK BAY SALMON CANNING CO.,  
Defendant.

JUDGE'S CERTIFICATE TO BILL OF EX-  
CEPTIONS.

I hereby certify that I am the Judge by and before whom the above-entitled cause was tried and that the foregoing bill of exceptions is a full, true and correct account and transcript of the evidence and proceedings had therein, and that it contains the evidence and all the evidence heard or considered at said trial.

I also certify that the said bill of exceptions was duly presented and filed within the time allowed by law and the rules of this court.

Wherefore, said bill of exceptions being true and correct, I do now, within the time allowed by law and the rules of this Court, allow and settle the same, and order it to be filed and to become a part of the records of this cause.

Dated at Ketchikan, Alaska, this 23d day of April, 1924.

THOS. M. REED,  
District Judge.

Entered Court Journal No. 1, page 288. [22]

In the District Court for the Territory of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

THE AUK BAY SALMON CANNING CO.,  
Defendant.

CERTIFICATE OF REPORTER TO TRAN-  
SCRIPT OF RECORD.

I, George W. Folta, do hereby certify that I am the official reporter for the United States District Court for the First Judicial Division of the Territory of Alaska, and that as such reporter I reported the testimony taken and proceedings had on the trial of the above-entitled cause and transcribed the same into typewriting and that the above and foregoing is a true and correct transcript of all of such testimony and proceedings.

Dated this 23d day of April, 1924.

G. W. FOLTA,  
U. S. Court Reporter.

Filed in the District Court, Territory of Alaska,  
First Division. Apr. 23, 1924. John H. Dunn,  
Clerk. By W. B. King, Deputy. [23]



In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,

Defendant.

#### ASSIGNMENTS OF ERROR.

Comes now the defendant above named, and files the following assignments of error upon which it will rely in the prosecution of the writ of error in the above-entitled cause from the judgment and proceedings had by this Honorable Court, which said judgment was signed and entered in the above-entitled court on the 21st day of April, 1924.

##### I.

The District Court for the District of Alaska erred in denying and refusing to grant defendant's motion to quash the indictment herein.

##### II.

The District Court erred in overruling the demurrer interposed by the defendant and appellant to the indictment.

##### III.

The Court erred in overruling the objection of

the defendant to the introduction of any evidence upon the trial of this cause.

IV.

The Court erred in overruling defendant's motion made at the close of plaintiff's evidence to dismiss the indictment and discharge the defendant upon the grounds set forth in said motion.

V.

The Court erred in refusing to grant defendant's motion for an instructed verdict of "not guilty" made at the close of all the evidence in the case upon the grounds set forth in said motion. [24]

VI.

The Court erred in instructing the jury that if they found that the defendant did willfully and unlawfully fish for salmon for commercial purposes by means of a fish-trap between August 10th and September 1st, 1923, between the 57th degree of north latitude and the 60th degree of north latitude and east of the 139th meridian of west longitude in the waters of Alaska, as charged in the indictment, then it would be their duty to find a verdict of "guilty."

VII.

The Court erred in entering judgment herein against the defendant.

And for said errors and others manifest of record, defendant prays that the judgment herein be reversed and the cause remanded.

Dated at Ketchikan, Alaska, the 23d day of April, 1924.

H. L. FAULKNER,  
Attorney for Defendant.

Copy of the foregoing and within assignments of error received this 23d day of April, 1924, and service thereof admitted said day.

LESTER O. GORE,  
Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska, First Division. Apr. 23, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [25]

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In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

UNITED STATES OF AMERICA

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,

Defendant.

PETITION FOR WRIT OF ERROR.

To the Honorable THOMAS M. REED, Judge of  
the Above-entitled Court:

The above-named defendant, Auk Bay Salmon Canning Company, a corporation, feeling itself aggrieved by the verdict of the jury rendered herein on April 21st, 1924, and the judgment and sentence

thereon rendered in this court on the 21st day of April, 1924, whereby the defendant Auk Bay Salmon Canning Company, was adjudged guilty of the crime of unlawful fishing in violation of section 1, Chapter 95 of the Session Laws of Alaska, 1923, and sentenced the 21st day of April, 1924, by the Judge of this court to pay a fine of \$400.00 and costs.

Comes now the defendant and petitions this Honorable Court for a writ of error allowing said defendant to prosecute a writ of error in and to the United States Circuit Court of Appeals for the Ninth Circuit pursuant to the law in such cases provided; also that an order be made herein staying the proceedings and execution in such case until further order of the United States Circuit Court of Appeals, and pending the prosecution of said writ of error.

AUK BAY SALMON CANNING COMPANY, a Corporation.

By H. L. FAULKNER,  
Its Agent and Attorney.  
H. L. FAULKNER,  
Attorney for Defendant.

Service admitted April 23d, 1924.

LESTER O. GORE,  
Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska, First Division. April 23, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [26]

In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

UNITED STATES OF AMERICA

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,

Defendant.

ORDER ALLOWING WRIT OF ERROR AND  
FIXING SUPERSEDEAS BOND.

This cause coming on to be heard in open court  
this 23d day of April, 1924, and the Court having  
examined the petition for writ of error herein, and  
having heard counsel for the United States and  
for the defendant,

IT IS ORDERED that the writ of error be al-  
lowed in this case, and the amount of supersedeas  
bond to be filed herein be fixed at the sum of  
\$1000.00.

Done in open court this 23d day of April, 1924.

THOS. M. REED,

Judge.

Copy received April 23d, 1924.

LESTER O. GORE,

Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska,

First Division. Apr. 23, 1924. John H. Dunn,  
Clerk. By W. B. King, Deputy.

Entered Court Journal No. 1, page 287. [27]

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In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,

Defendant.

BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS,  
That we, Auk Bay Salmon Canning Company, the  
above-named defendant, principal, and J. R. Heck-  
man, and W. A. Bryant, all of Ketchikan, Alaska,  
as sureties, are held and firmly bound unto the  
United States of America in the penal sum of  
\$1000.00, for which payment, well and truly to be  
made, we bind ourselves and each of us, our suc-  
cessors, heirs, executors, administrators and assigns  
jointly and severally firmly by these presents.

Signed and sealed at Ketchikan, Alaska, April  
23d, 1924.

The condition of the above obligation is such  
that whereas the above-named principal and de-



defendant, Auk Bay Salmon Canning Company, a corporation, is about to sue out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above-entitled court rendered in the District Court of the District of Alaska at Ketchikan, Alaska, on April 21st, 1924, and entered and made herein on the 21st day of April, 1924, whereby and by the terms of which the said defendant Auk Bay Salmon Canning Company, a corporation, was sentenced to pay a fine of \$400.00, for the crime mentioned in said judgment and sentence.

NOW, THEREFORE, the condition of this obligation is such that if the said defendant, Auk Bay Salmon Canning Company, a corporation, shall prosecute said writ of error to effect, and answer all costs and damages, if it [28] shall fail to make good its plea, and shall at all times render itself amenable to the orders and process of this court or the United States Circuit Court of Appeals for the Ninth Circuit, and render itself in execution if the judgment of this court is affirmed, or any judgment of this court in said proceedings, or said Appellate Court, or any court, then this obligation shall be void; otherwise to remain in full force and effect.

AUK BAY SALMON CANNING COMPANY, a Corporation.

By H. L. FAULKNER,  
Its Agent and Attorney, Principal.

J. R. HECKMAN,  
W. A. BRYANT,

Sureties.

Taken and acknowledged before me this 23d day of April, 1924.

[Seal]

JOHN H. DUNN,  
Clerk of District Court, Dist. of Alaska, Division  
No. 1.

United States of America,  
Territory of Alaska,—ss.

We, J. R. Heckman and W. A. Bryant, being first severally duly sworn, each for himself and not one for the other, depose and say: That we are sureties on the foregoing bond and residents of the First Judicial Division, District of Alaska; and not counsellors at law nor attorneys, marshals, deputy marshals, clerks of any court, no other officers of any court; that we are each over the age of 21 years and worth the sum of \$1000.00 each, over and above all our just debts and liabilities and exclusive of property exempt from execution.

J. R. HECKMAN.

W. A. BRYANT.

Subscribed and sworn to before me at Ketchikan, First Judicial Division, [29] District of Alaska, this 23d day of April, 1924.

[Seal]

JOHN H. DUNN,  
Clerk of District Court, Dist. of Alaska, Division  
No. 1.

Approved this 23d day of April, 1924, and stay of execution granted for a period of 60 days.

THOS. M. REED,

Judge.



Copy received this 23d day of April, 1924.

LESTER O. GORE,  
Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska,  
First Division. Apr. 23, 1924. John H. Dunn,  
Clerk. By W. B. King, Deputy. [30]

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In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,  
Defendant.

### WRIT OF ERROR.

The President of the United States, to the Honorable THOMAS M. REED, Judge of the District Court for the District of Alaska, Division Number One at Ketchikan, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in said District Court before you, between the United States of America and Auk Bay Salmon Canning Company, a corporation, manifest error hath happened to the great prejudice and damage of the defendant, Auk Bay Salmon Canning Company, a

corporation, as is stated and appears in the petition herein.

We, being willing that error, if any hath happened, should be duly corrected and full and speedy justice be done to the parties in this behalf, do command you, if judgment be therein given that then, under your seal, distinctly and openly you send the record and the proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, together with this writ, so that you have the same before the court on or before thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the Circuit Court of Appeals may cause further to be done therein to correct those errors what of right and according to the laws and customs [31] of the United States ought to be done or should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, and the seal of the District Court of Alaska, Division Number One, affixed at Ketchikan this 23d day of April, 1924.

Allowed:

THOS. M. REED,  
Judge.

Copy received and service admitted this April 23, 1924.

LESTER O. GORE,  
Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska,  
First Division. Apr. 23, 1924. John H. Dunn,  
Clerk. By W. B. King, Deputy. [32]

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In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,

Defendant.

CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America, to  
A. G. Shoup, United States Attorney for the  
First Division, District of Alaska, GREET-  
ING:

You are hereby cited and admonished to be and  
appear in the United States Circuit Court of Ap-  
peals for the Ninth Circuit, to be holden in the  
City of San Francisco, State of California, within  
thirty days from the date of this writ, pursuant  
to a writ of error filed in the District Court for  
the District of Alaska, Division No. One, at Ketchi-  
kan, Alaska, wherein the Auk Bay Salmon Canning  
Company is plaintiff in error, and the United States  
is defendant in error, then and there to show cause,

if any there be, why the said judgment in said case, and in said writ of error mentioned should not be corrected and speedy justice done in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 23d day of April, 1924.

THOS. M. REED,  
Judge.

Service of foregoing citation admitted this 23 day of April 1924.

LESTER O. GORE,  
Asst. U. S. Attorney.

Filed in the District Court, Territory of Alaska, First Division. Apr. 23, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [33]

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In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 870-KB.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

AUK BAY SALMON CANNING COMPANY, a  
Corporation,  
Defendant.

PRAECIPE FOR TRANSCRIPT OF RECORD.  
To the Clerk of the District Court, Ketchikan,  
Alaska.

You will please make up a transcript of the record

in the above-entitled cause, and include therein the following papers, to wit:

1. Indictment.
2. Motion to quash indictment.
3. Demurrer.
4. Order overruling motion to quash and demurrer.
5. Bill of exceptions.
6. Verdict.
7. Judgment.
8. Assignments of error.
9. Petition for writ of error.
10. Order allowing writ of error.
11. Bond on writ of error.
12. Writ of error.
13. Citation on writ of error.
14. This praecipe.

—said transcript to be prepared in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit; and please [34] forward the same to the Clerk of the said Circuit Court of Appeals for the Ninth Circuit in accordance with said rules.

Dated at Ketchikan, Alaska, April 23, 1924.

R. E. ROBERTSON,  
H. L. FAULKNER,  
Attorneys for Defendant.

Filed in the District Court, Territory of Alaska, First Division. Apr. 23, 1924. John H. Dunn, Clerk. By W. B. King, Deputy. [35]

In the District Court for the Territory of Alaska,  
Division Number One, at Ketchikan.

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Territory of Alaska,  
Division Number One,—ss.

I, John H. Dunn, Clerk of the District Court for the Territory of Alaska, Division No. One, hereby certify that the foregoing and hereto attached 35 pages of typewritten matter, numbered "one" to "thirty-five," both inclusive, constitute a full, true and complete copy, and the whole thereof, of the record, in accordance with the praecipe of the plaintiff in error (defendant) on file herein, and made a part thereof, in the cause wherein the Auk Bay Salmon Canning Company, a corporation, is plaintiff in error (defendant), and the United States of America is defendant in error (plaintiff), No. 870-KB, 1610-B, as the same appears of record and on file in my office, and that the said record is by virtue of a writ of error and citation issued in this cause, and the return thereof, in accordance therewith.

I do further certify that the transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Thirteen and 50/100 Dollars (\$13.50), has been paid to me by counsel for plaintiff in error (defendant).



IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the above-entitled court, this 24th day of April, 1924.

[Seal]

JOHN H. DUNN,  
Clerk.

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[Endorsed]: No. 4245. United States Circuit Court of Appeals for the Ninth Circuit. Auk Bay Salmon Canning Company, a Corporation, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Division No. 1.

Filed April 30, 1924.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

